

REMARKS

This Amendment is submitted in reply to the Final Office Action mailed on March 3, 2010. No fees are due herewith this Amendment. The Director is authorized to charge any fees that may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 3712036-00735 on the account statement.

Claims 1-19 are pending in the application. Claims 1-2, 4-13 and 16-18 were previously withdrawn. In the Office Action, Claims 3, 14, 15 and 19 are rejected under 35 U.S.C. §§101, 112 and 102. In response, Claims 14, 15 and 19 have been amended and Claim 3 has been canceled without prejudice or disclaimer. The amendments do not add new matter and are supported in the specification at, for example, page 13, lines 1-15. In view of the amendments and/or for at least the reasons set forth below, Applicants respectfully request that the rejections be reconsidered and withdrawn.

In the Office Action, Claims 3, 14, 15 and 19 are rejected under 35 U.S.C. §101 because the claimed invention is allegedly directed to non-statutory subject matter. Specifically, the Patent Office asserts that Claims 3, 14-15 and 19 “read on a beet which has been dried naturally, for instance in the sun and therefore, the hand of man is [not] evident in the claimed invention.” See, Office Action, page 4, lines 1-4. In response, Claim 3 has been canceled without prejudice or disclaimer. Claims 14 and 15 have been amended to recite orally ingestible composition, cosmetic composition, or products comprising a fat source and at least one raw plant material selected from the group consisting of *Daucus*, *Helianthus*, *Beta* and combinations thereof, the plant material being processed by a drying process to obtain glucosamine in an amount greater than 150 mg/kg dry matter. Claim 19 has been amended to recite, in part, orally ingestible compositions comprising a source of protein and at least one raw plant material selected from the group consisting of *Daucus*, *Helianthus*, *Beta* and combinations thereof, the plant material being processed by a drying process to obtain glucosamine in an amount greater than 150 mg/kg dry matter. The amendments do not add new matter and are supported in the specification at, for example, page 13, lines 1-15. Applicants respectfully submit that the compositions and products of the present claims now require, in addition to the plant or derived plant material, a fat source

or a source of protein. The specification provides several examples of protein and fat sources that may be added to the compositions. See, specification, for example, page 13, lines 1-15.

Accordingly, Applicants respectfully request that the rejection of Claims 3, 14, 15 and 19 under 35 U.S.C. §101 as being directed to non-statutory subject matter be reconsidered and withdrawn.

In the Office Action, Claims 3, 14, 15 and 19 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Patent Office asserts that “[i]t is not clear what amounts would be encompassed by the phrase ‘effective amount’ because the claims do not recite an intended use.” See, Office Action, page 4, lines 17-19. In response, Applicants have canceled Claim 3 and deleted the phrase “effective amount” from Claims 14-15 and 19. For at least the above-mentioned reasons, Applicants respectfully submit that the rejection of Claims 3, 14-15 and 19 under 35 U.S.C. §112, second paragraph, is now rendered moot.

Accordingly, Applicants respectfully request that the rejection of Claims 3, 14-15 and 19 under 35 U.S.C. §112, second paragraph, be reconsidered and withdrawn.

In the Office Action, Claims 3, 14, 15 and 19 are rejected under 35 U.S.C. §102(b) as being anticipated by “Increase in the Sucrose Content of Sugar Beets After Their Removal from Soil,” Sugar, 1917, 19, Abstract to Weichmann (“*Weichmann*”). In view of the amendments and/or for at least the reasons set forth below, Applicants respectfully submit that *Weichmann* is deficient with respect to the present claims.

As discussed above, Claims 14 and 15 have been amended to recite orally ingestible composition, cosmetic composition, or products comprising a fat source and at least one raw plant material selected from the group consisting of *Daucus*, *Helianthus*, *Beta* and combinations thereof, the plant material being processed by a drying process to obtain glucosamine in an amount greater than 150 mg/kg dry matter. Claim 19 has been amended to recite, in part, orally ingestible compositions comprising a source of protein and at least one raw plant material selected from the group consisting of *Daucus*, *Helianthus*, *Beta* and combinations thereof, the plant material being processed by a drying process to obtain glucosamine in an amount greater than 150 mg/kg dry matter. The amendments do not add new matter and are supported in the

specification at, for example, page 13, lines 1-15. As such, the present disclosure is directed, at least in part, toward products and compositions containing plant materials and/or glucosamine generated from plant materials through a drying process for the maintenance of joint health, or prevention, alleviation and/or treatment of osteoarthritis, or the improvement of the skin quality and prevention or restoration of age-related alterations of the skin.

Surprisingly, Applicants have found that glucosamine can actually be formed in high amounts during a controlled drying process of some raw plant materials. See, specification, page 8, lines 14-15. The drying process of the present disclosure surprisingly provides a way to increase/obtain glucosamine at high levels (*i.e.*, higher than amounts in corresponding fresh (not dried) material). It is likely that during the drying process, the glucosamine comes not from the direct degradation of macromolecules, but, rather, from a release of free fructose and amino acid, followed by the first steps of a Maillard reaction. See, specification, page 11, lines 4-22. In contrast, Applicants respectfully submit that *Weichmann* is deficient with respect to the pending claims because *Weichmann* fails to disclose or suggest each and every element of the present claims.

For example, *Weichmann* fails to disclose or suggest compositions comprising, in addition to the plant or derived plant material having increased amounts of glucosamine, a source of fat or a source of protein. Instead, *Weichmann* is entirely directed to the formation of carbohydrates from drying plants at varying degrees of heat. See, *Weichmann*, Abstract. At no place in the disclosure does *Weichmann* disclose or suggest compositions having multiple ingredients, let alone compositions having added fat or protein sources as is required, in part, by the present claims.

Further, anticipation is a factual determination that “requires the presence in a single prior art disclosure of each and every element of a claimed invention.” *Lewmar Marine, Inc. v. Barient, Inc.*, 827 F.2d 744, 747 (Fed. Cir. 1987) (emphasis added). Federal Circuit decisions have repeatedly emphasized the notion that anticipation cannot be found where less than all elements of a claimed invention are set forth in a reference. See, *e.g.*, *Transclean Corp. v. Bridgewood Services, Inc.*, 290 F.3d 1364, 1370 (Fed. Cir. 2002). As such, a reference must clearly disclose each and every limitation of the claimed invention before anticipation may be found. In the instant case, the Patent Office has failed to identify any disclosure in *Weichmann*

that demonstrates any compositions or products containing ingredients in addition to a dried raw plant material used to obtain glucosamine in an amount greater than 150 mg/kg dry matter as is required, in part, by the present claims. Instead, the Patent Office must be able to specifically identify the disclosure of each and every limitation of the claimed invention before anticipation may be found.

For at least these reasons, Applicant respectfully submits that the anticipation rejection is improper and that *Weichmann* fails to anticipate the presently claimed subject matter.

Accordingly, Applicant respectfully requests that the anticipation rejections of Claims 3, 14-15 and 19 under 35 U.S.C. §102 be reconsidered and withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly request an early allowance of the same. In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

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